

No. 10,773

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK LAURENT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S SUPPLEMENTAL BRIEF.

FRANK J. HENNESSY,

United States Attorney,

REYNOLD H. COLVIN,

Assistant United States Attorney,

Post Office Building, San Francisco 1,

Attorneys for Appellee.

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This Honorable Court having on March 31, 1945, ordered that appellee file and serve on opposing counsel, within twenty days, a supplemental brief conforming to Rule 20 (f), appellee does submit the following supplement of statutes and regulations:

Title 18 *U.S.C.* Section 88.

Conspiring to commit offense against United States. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R.S. §5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, §37, 35 Stat. 1096.

Second War Powers Act of 1942—approved March 27, 1942. Pub. L., No. 507, 77th Cong., 2d Sess. c. 199; 56 Stat. 176; 50 U.S.C.A., Appx. 633.

Title III of the Second War Powers Act of 1942 which was enacted March 27, 1942, section 2(a) 2 thereof, provides:

“Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.”

Subdivision 5 of that section provides:

“Any person who willfully performs any act prohibited, or wilfully fails to perform any act required by, any provision of this sub-section (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.”

Subdivision 8 of section 2(a) 2 provides that:

“The President may exercise any power, authority, or discretion conferred on him by this subsection (a) through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.”

Pursuant to Executive Order No. 9125 (7 Federal Register 2719), the President conferred upon the Chairman of the War Production Board the power to exercise the authority and discretion conferred upon the President of the United States by Title III of the Second War Powers Act of 1942.

The War Production Board by Directive No. 1 (7 Federal Register, 562), entitled "Delegation of Authority to the Office of Price Administration with respect to Rationing", provides:

"(a) The Office of Price Administration is authorized and directed to perform the functions and exercise the power, authority and discretion conferred upon the President."

The War Production Board by Supplementary Directive No. 1 H (7 Federal Register, 3478), relating to the Delegations of Authority, provides in section (a) that:

"In order to permit the efficient rationing of gasoline, the authority delegated to the Office of Price Administration in Section 903.1 (Directive No. 1) is hereby extended to include the exercise of rationing control over the sale, transfer or other disposition of gasoline by any person to any consumer as defined in paragraph (c) hereof, and the term 'consumer' means any person who acquires gasoline for use rather than transfer and any other person to the extent to which he uses gasoline irrespective of the purpose for which the gasoline was obtained by him."

The War Production Board Amendment 2 to Supplementary Directive 1 H, which directive is entitled:

“Further Authorization of Office of Price Administration in Gasoline Rationing”, provides in section 903.9 (a):

“In order to permit the efficient rationing of gasoline, the authority delegated to the Office of Price Administration in Section 903.1, Directive No. 1, is hereby extended to include the following: (1) The exercise of rationing control over the sale, transfer, delivery or other disposition of gasoline by any person to any consumer in cases in which such consumer is within the limitation area, and over the use of gasoline by any such consumer.”

The War Production Board by Supplementary Directive No. 1 Q (7 Federal Register 912) entitled, “Rationing of Tire, Tire Casings, Tire Tubes, etc.” provides:

“(a) The authority heretofore delegated to the Office of Price Administration by Directive No. 1, Section 9031, is hereby extended to include the exercise of control over.” (Many things.)

Subdivision 3:

“The sale, transfer, delivery or other disposition of gasoline by any person to any consumer, the use of gasoline by any consumer, the use of gasoline substitutes or gasoline blends by any consumer in a motor vehicle, and the blending by any gasoline dealer.”

Subdivision 4:

“The sale, transfer, delivery or other disposition of gasoline by any person to any person other than a consumer, to the extent of requiring the delivery

of such coupons, certificates or other evidence as the Office of Price Administration may prescribe as a condition to such sale, transfer, delivery or disposition."

General Ration Order No. 8, effective April 15, 1943 (8 F. R. 3783), issued by Administrator, Office of Price Administration, provides:

1305.53. "*General prohibitions, penalties and conditions.* Under the authority vested in the Administrator by Executive Order No. 9125, Directive No. 1 of the War Production Board and Food Directive No. 3 issued by the Secretary of Agriculture, General Ration Order No. 8 (General Prohibitions, Penalties and Conditions) which is annexed hereto and made a part hereof, is hereby issued."

ARTICLE II.

Section 2.5. "Acquisition, use, transfer or possession of counterfeited or forged ration document. No person shall acquire, use, permit the use of, transfer, possess or control any counterfeited or forged ration document under circumstances which would be in violation of section 2.6 if the document were genuine or if he knows or has reason to believe that it is counterfeited or forged."

Section 2.6. "Acquisition, use, transfer or possession of ration document. No person shall acquire, use, permit the use of, possess or control a ration document except the person or the agent of the person to whom such ration document was issued or by whom it was acquired in accordance

with a ration order or except as otherwise provided by a ration order. No person shall use or transfer a token or other ration document except in a way and for a purpose permitted by a ration order."

Section 2.8. "Wrongful acquisition, possession, use or transfer of rationed commodity. No person shall acquire, possess, use, permit the use of, sell or otherwise transfer a rationed commodity except in accordance with the provisions of a ration order. No person shall possess, use, permit the use of, sell or otherwise transfer any rational commodity acquired in violation of a ration order."

ARTICLE III.

Section 3.1. "Criminal prosecution. Any person who wilfully performs any act prohibited, or wilfully fails to perform any act required, by any ration order, shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, and shall be subject to such other penalties as may be prescribed by law."

Ration Order No. 5C (7 F. R. 9135) effective November 9, 1942, except that the provisions of section 1394.8151 to 1394.8180, inclusive, and the provisions of 1394.8201 to 1394.8227, inclusive became effective December 1, 1942, was issued "Pursuant to the authority vested in me (Administrator, OPA) by War Production Board Directive No. 1, issued January 24, 1942, and by Supplementary Directive No. 1Q issued November 6, 1942". (Preamble.)

1394.8152. “*Transfers to consumers.* On and after November 22, 1942, and notwithstanding the terms of any contract, agreement, or commitment, regardless of when made, a dealer or distributor may transfer gasoline to a consumer, and a consumer may accept such transfer of gasoline, only in exchange for valid coupons, except as provided in 1394.8153 (c), 1394.8154, 1394.8155, and 1394.8156.”

1394.8153. “*Transfers to consumers in exchange for coupons and ration checks and gasoline purchase permits.*—(a) Coupons issued for registered and commercial motor vehicles. Transfers may be made and accepted under the following conditions in exchange for Class A, B, C, D, or T coupons having an aggregate unit value equal to the amount of gasoline transferred. However, if the transferee is able to accept only a portion of the amount of gasoline represented by the unit value of the coupon, the transferor shall nevertheless require the surrender of an entire coupon.”

(1) “In the case of a coupon issued in a ration book, the transferor at the time of transfer, must require presentation of the coupon book and must detach therefrom coupons having an aggregate unit value equal to the amount of gasoline transferred. No transfer may be made pursuant to this subparagraph in exchange for a coupon detached before the presentation of the coupon book to the transferor.”

(2) “In the case of a serially numbered coupon issued in strips in connection with an identifying folder, the transferor, at the time of transfer, must require presentation of the coupons and

the identifying folder. No transfer may be made pursuant to this subparagraph in exchange for a coupon which does not bear a serial number included in the sequence of serial numbers specified on the cover of the identifying folder.”

(3) “Transfer may be made only into the fuel tank of a motor vehicle identified on the coupon book or folder presented and only if a sticker corresponding to the class of coupon book or coupon presented is conspicuously displayed on such vehicle, as required by the provisions of 1394.8165 relating to stickers. These rules, however, are subject to the following three exceptions:

(i) ‘Upon the presentation of a Class A book, transfer may be made into the fuel tank of a passenger automobile identified on such book if a Class B or C sticker is displayed.’

(ii) ‘If the ration book or identifying folder bears a notation by a Board indicating that bulk transfer is authorized, a bulk transfer may be made in exchange for a coupon contained in such book or bearing a serial number included in the serial numbers specified on such folder.’

(iii) ‘Bulk transfer may also be made, of an amount of gasoline not in excess of one unit, to enable a vehicle stranded for lack of gasoline to reach a source of supply; in such case the transferor shall retain the ration book presented, or the identifying folder and coupons presented, until the vehicle is brought to the place of transfer for identification.’ ”

(4) “Transfer may be made only on and after the validity date noted on the cover of the ration book or identifying folder presented or, in the

case of a Class A book only during the valid period of the coupon in exchange for which the transfer is to be made. In the case of rations issued for leased vehicles and special rations which bear an expiration date, and of Class T coupons, transfers may be made only during the valid period noted on the cover of the book or identifying folder which is presented.”

(5) “Transfer may be made only in exchange for coupons bearing the notations required by 1394.8004(e) * * *”

1394.8004(e). “*Notations by ration holder.* Immediately upon receipt of any ration coupons each person to whom such coupons are issued shall write, stamp or print on the face of the coupons issued to him the following information:

(1) “In the case of Class A coupons, the license number and state of registration of the vehicle for which such ration was issued.”

(2) “In the case of Class B, C, D and T coupons, the license number and state of registration of the vehicle for which the ration was issued. However, in the case of interchangeable ration books and folders accompanying serially numbered coupons issued for use interchangeably among fleet or official vehicles, the information shall be the official or fleet designation (or the certificate of war necessity number in the case of commercial vehicles not bearing fleet designations) and the state and city or town in which the principal office of the fleet operator is located; or in the case of ration books and folders accompanying serially numbered coupons issued for use interchangeably among other motor vehicles or

for use in motor vehicles which have not been assigned specific license numbers, the information shall be the name and address of the person to whom the ration was issued."

1394.8207. "*Restriction on transfers to dealers.*

(a) (1) Except as provided in 1394.8209, no dealer or distributor shall transfer or offer to transfer gasoline to a dealer, and no dealer shall receive a transfer of gasoline, except in exchange for a quantity of coupons or other evidences at the time of the actual delivery of the gasoline or in advance thereof, equal in gallonage value to the quantity of the gasoline transferred, or, in cases in which gasoline is regularly transferred to him on a temperature adjustment basis, equal in gallonage value to the adjusted quantity of gasoline transferred: Provided, That transfers of gasoline may be made only in exchange for coupons which bear the notations required by paragraphs (d) and (e) of 1394.8004, paragraph (c) of 1394.8006 and paragraph (b) of 1394.8206, and which have been affixed to coupon sheets containing the name, address, date of surrender and unit value of the coupons as prescribed in 1394.8211."

Dated, San Francisco,

April 20, 1945.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

REYNOLD H. COLVIN,

Assistant United States Attorney,

Attorneys for Appellee.